

Action, the Examiner alleged that the Response filed by Applicant on October 17, 2000 was not fully responsive to the prior Office Action of July 17, 2000 because "Applicant has not addressed how the pending claims are not anticipated by the Branemark reference, especially the independent claims". Applicant appreciates the opportunity to present further comments and more specific arguments as to the patentable distinctions between the pending claims and the Branemark reference.

Claims 1-29 stand rejected under 35 U.S.C. 112, second paragraph, for indefiniteness. Claims 1-40 stand rejected under 35 U.S.C. 102(b) as anticipated by U.S. Patent No. 4,767,328 to Branemark ("Branemark '328").

In the July 17, 2000 Office Action, the Examiner acknowledged Applicant's claim for foreign priority based on applications filed in Germany on July 9, 1997 and February 1, 1998. However, the Examiner indicated that certified copies of the German applications has not yet been filed. The current application is a continuation-in-part of application Serial No. 09/113,031 filed July 9, 1998. Certified copies of the German applications were filed in this parent case; thus, it is not required that Applicant also file certified copies of the German applications in this CIP application.

Turning first to the rejection of claims 1-29 under Section 112, second paragraph, Applicant respectfully disagrees that the terms "bending resistant" and "predetermined bending locations" are contradictory. The term "resistant" does not imply that no bending at all is possible. Rather, the term implies that only a sufficiently large bending capability exists so that during construction, as well as during the handling of the bar at its predetermined position, some bending is

possible to allow the bar to match up, or fit, the jaw.

Thus, Applicant submits that claims 1-29 are not indefinite, and respectfully requests withdrawal of the rejection under Section 112 and reconsideration of these claims.

With regard to the substantive rejection of the claims as anticipated by Branemark '328, Applicant respectfully disagrees that this cited reference shows or even suggests the combination of elements as claimed in the present invention.

Independent claim 1 of the present application recites the following structural elements which comprise the claimed bending resistant bar for reshaping human or animal bone with bone replacement material:

- the bar has a flat cross-section;
- the bar comprises at least two slotted holes extending in a longitudinal direction of the bar and distributed evenly along the length of the bar;
- the bar has notched longitudinal edges;
- the bar has an underside with transverse grooves extending perpendicularly to the longitudinal direction over the entire width of the bar;
- the notches and the transverse grooves provide predetermined bending locations for the bar.

Branemark discloses a splint 3 that is attached by screws 4 to implants 2 in the bone 1. A row of teeth 6 is then attached by screws 5 and possibly an interposed resilient member 7 to the splint 3. As recited in claim 1 of the present application, the inventive bar has a flat cross-section. The splint 3 of Branemark is L- or U-shaped, as explicitly disclosed in Branemark, column 2, lines 36-37.

Branemark's splint also fails to show the at least two slotted holes extending in a longitudinal direction of the bar and distributed evenly along the length of the bar, as further recited in Applicant's claim 1. Rather, Branemark's disclosure and accompanying figures show that the splint has several transverse notches disposed along the length of the splint, through which attachment means 4 are threaded, and several small, rounded bore holes.

Claim 1 further recites that the claimed bar has longitudinal edges with notches. Neither Branemark's disclosure nor the accompanying figures describe or show that the splint 3 (or the resilient member 7) have notched, longitudinal edges.

Claim 1 of the present application further sets forth that the bar has an underside having transverse grooves extending perpendicularly to the longitudinal direction over the entire width of the bar. Again, Branemark does not disclose or suggest that the splint 3 has an underside portion with transverse grooves. Likewise, Branemark's figures do not show the underside of the splint 3, or certainly that the underside portion would be grooved.

Finally, claim 1 of the present application recites that the notches and transverse grooves provide predetermined bending locations for the bar. Because Branemark fails to show or suggest either the longitudinal notches or transverse grooves on the underside of the splint, it follows necessarily that Branemark also fails to provide the predetermined bending locations formed by these notches and grooves.

Applicant respectfully submits that claim 1 sets forth structural features that are neither shown nor suggested by the Branemark reference, and that as such,

claim 1 and its dependent claims cannot be seen as anticipated by this reference. Applicant therefore respectfully requests withdrawal of the rejection of claims 1-6.

Likewise, independent claim 7 of the present application also includes the patentably distinct feature that the bar has a flat cross-section, while, as argued above, Branemark specifically provides that the splint is L- or U-shaped. Therefore, Applicant respectfully submits that claim 7 should not be viewed as anticipated by Branemark.

Independent claim 8 recites the following features which comprise the claimed device for reshaping human or animal bone with bone replacement material:

- at least two spaced apart implants adapted to be implanted in the bone so as to project by a projecting height from the bone;
- the at least two space apart implants have support surfaces facing away from the bone;
- a bending-resistant bar placed onto the support surfaces;
- the bar is spaced from the bone by the projecting height of the implants;
- fasteners penetrating the bar and engaging the implants to clamp the bar at the supporting surface of the implants.

Nowhere in Branemark's specification or figures is it shown or suggested that the implants project from the bone. Nor does Branemark disclose support surfaces facing away from the bone. Furthermore, in Branemark, the bar is directly positioned on the bone, while, as claimed in claim 8 in the present application, the bar is spaced from the bone by the projecting height of the implants. As such, claim 8 of the present invention, along with its dependent claims 9-29, cannot be seen as

anticipated by Branemark. Applicant therefore respectfully requests withdrawal of the rejection of claims 8-29 under Section 102.

Likewise, independent claim 30 includes the above-described limitations of claim 8: specifically, that the implant is adapted to be implanted in the bone so as to project by a projecting height from the bone and that the implant has a support surface facing away from the bone when the implant is implanted. Again, as argued above, Branemark neither shows nor discloses these features of claim 30.

Finally, independent claim 40 recites a method including the steps of:

- implanting the implants of claim 30;
- mounting a bar of claim 1 to the implants; and
- height-adjusting the bar relative to the bone during the reshaping process by adjusting the implants as the reshaping progresses.

To reiterate, Branemark fails to show or suggest the implants of claim 30 or the bar of claim 1 of the present invention, so it necessarily follows that Branemark cannot disclose a method which involves implanting and mounting these structures. Further, nowhere does Branemark disclose the step of height-adjusting the bar relative to the bone during the reshaping process by adjustment of the implants.

As such, Branemark cannot be viewed as anticipatory of the method claimed in claim 40 of the present application. Applicant therefore respectfully requests withdrawal of the rejection of claim 40 under Section 102.

In conclusion, it is believed that the cited reference to Branemark fails to teach the invention as claimed in claims 1-40, or to even suggest such a combination of features. As such, claims 1-40 are patentable over this reference. Applicant

respectfully requests withdrawal of the rejection of claims 1-40 under Section 102 and reconsideration of these claims.

In light of the foregoing remarks in support of patentability, Applicant respectfully submits that this application now stands in condition for allowance. Action to this end is courteously solicited. Should the Examiner have any further comments or suggestions, the undersigned would very much welcome a telephone call in order to discuss appropriate claim language that will place the application into condition for allowance.

Respectfully Submitted,



Robert W. Becker, Reg. No. 26,255  
for applicant

ROBERT W. BECKER & ASSOCIATES  
11896 N. Highway 14, Suite B  
Tijeras, NM 87059

Telephone: (505) 286-3511  
Facsimile: (505) 286-3524